

(a) Director, Office of Workers' Compensation Programs, U.S. Department of Labor. The Director is presently Julia Hearthway. Her office address is 200 Constitution Ave., NW, Suite S-3524, Washington, DC 20210. The Director, OWCP is represented by the Office of the Solicitor, U.S. Department of Labor, Division of Black Lung and Longshore Legal Services, 200 Constitution Ave., NW, Room N-2119, Washington, D.C. 21210.

(b) Cecilia R. Coon. Her address is 22650 94th Avenue, South Kent, Washington 98031. Ms. Coon is represented by Ralph Lorberbaum and Zipperer, Lorberbaum & Beauvais, P.O. Box 9147, Savannah, Georgia 31412.

3. This petition for review arises out of a claim for workers' compensation benefits filed by Cecilia R. Coon under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651, *et seq.*

Ms. Coon was injured while driving a privately-owned vehicle on a public road in the Dallas-Fort Worth Metroplex. At the time of the injury Ms. Coon was returning from a drug test which was done at Omni's request to comply with FAA regulations. Ms. Coon filed her claim against Omni Air International Inc., and its carrier, Starr Indemnity & Liability Company in the OWCP Eighth Compensation District.

Omni and Starr controverted the claim on the basis that Ms. Coon's injury occurred in the United States and that she was not in service to a particular DBA-covered contract at the time of injury. Administrative Law Judge Steven Berlin ordered dispositive motions be filed on the sole issue of coverage under the Defense Base Act. On November 17, 2017 Judge Berlin issued an Order Summarily Adjudicating Issue of Defense Base Act Coverage.¹ ALJ Berlin found that Ms. Coon's injury was within the jurisdiction of the Defense Base Act. The parties then entered into

¹ Exhibit A, Order Summarily Adjudicating Issue of Defense Base Act Coverage issued November 17, 2017.

stipulations that were approved on February 28, 2018. District Director David Widener served the Decision and Order regarding Defense Base Act coverage and the stipulations on March 7, 2018.²

Following the issuance of the Order Summarily Adjudicating Issue of Defense Base Act Coverage, Omni and Starr filed an appeal to the Benefits Review Board. On March 29, 2019 the Board issued a Decision and Order affirming Judge Berlin's Order Summarily Adjudicating Issue of Defense Base Act Coverage by a 2-1 decision.³

Omni and Starr now appeal the Board's decision to the U.S. District Court for the Southern District of Texas.

4. Omni and Starr ask this Court to review the Board's Decision and Order issued March 29, 2019 [BRB No. 18-0265]. Omni and Starr believe that the ALJ's Order Summarily Adjudicating Issue of Defense Base Act Coverage and the Board's Decision and Order are legally incorrect and that Ms. Coon's injury does not fall within the coverage of the Defense Base Act.

5. The U.S. District Court for the Southern District of Texas has jurisdiction over this petition for review. In the Fifth Circuit, it has been held that decisions of the Benefits Review Board in claims made under the Defense Base Act should be appealed to the U.S. District Court with jurisdiction over the location of the office of the Director, OWCP where the decision and order awarding benefits is filed. 42 U.S.C. § 1653(b); *AFIA/CIGNA World Wide v. Felkner*, 930 F.2d 111 (5th Cir. 1991). Similarly, in the Ninth Circuit it has been held that Board decisions must initially be appealed to the United States District Court where the office of the appropriate district director is located. *Glob. Linguist Sols., LLC v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

² Exhibit B, Service of Decision and Order by District Director David Widener, issued March 7, 2018.

³ Exhibit C, Decision and Order of the Benefits Review Board [BRB No. 18-0265] issued March 29, 2019.

The original decision and order in this claim was filed by David Widener, District Director, Office of Workers' Compensation Programs, in Houston, Texas.⁴ That office is located within the Southern District of Texas at the Mickey Leland Federal Building, 1919 Smith Street, Suite 870, Houston, Texas 77002.

6. This petition for review is timely filed because it is filed within 60 days of issuance of the final order of the Benefits Review Board. 33 U.S.C. § 921(c).

7. No motions for reconsideration are pending before the Benefits Review Board.

Omni Air International, Inc., and Starr Indemnity & Liability Company petition the Court to correct error committed by the Benefits Review Board and asks the Court to issue a briefing schedule.

Respectfully submitted,

**SCHOUEST, BAMDAS, SOSHEA &
BENMAIER PLLC**

/s/ Bradley T. Soshea

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⁴ See Exhibit B, page 1.

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